IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Bail Appl..No. 6742 of 2007()

CR. NO.36/07 OF VAMANAPURAM EXCISE RANGE

PETITIONER/ACCUSED

MURALI, S/O. GANGADHARAN,
NEDUMBA KIZHAKKUMKARA PUTHEN VEEDU,
PANAVUR, NEDUMANGAD.

BY ADV. SRI.A.RAJASIMHAN

RESPONDENTS: COMPLAINANT

EXCISE INSPECTOR,
VAMANAPURAM EXCISE RANGE, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6742 of 2007

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Dated this the 6th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 55(i) of the Kerala Abkari Act. The crux of the allegation is that the petitioner was found to be present in an open space with 1.2 litres of IMFL in a larger bottle. He was also allegedly having a glass/tumbler which he abandoned when he took to his heels. His identity was ascertained. The seizure mahazar as well as the occurrence report reveal his complicity. Investigation is in progress. The petitioner apprehends imminent arrest. The learned Prosecutor concedes that there is no allegation at the moment that he has any criminal antecedents.

2. The learned counsel for the petitioner submits that the allegations are false. Even if the entire allegations were accepted, possession of 1.2 litres of IMFL does not amount to

any offence. In these circumstances the petitioner may be granted anticipatory bail, it is prayed.

3. The learned Prosecutor opposes the application. He submits that the clear allegation is that the petitioner was indulging in sale of IMFL, though no buyer was intercepted. The circumstances of the case clearly indicate that the petitioner's purpose was to sell and in these circumstances it is submitted that anticipatory bail may not be granted to the petitioner.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Prosecutor. I am unable to perceive any features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioner. I note that there is no allegation of malice or malafides against the officials. I agree with the learned Prosecutor that this is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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